

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

ROY SPA, LLC,)	
)	
Respondent,)	
and)	Case No.: 19-CA-83329
)	
INTERNATIONAL BROTHERHOOD OF,)	ALJ Michael A. Marchionese
TEAMSTERS LOCAL 2,)	
)	
Charging Party.)	

DECLARATION OF MICHAEL E. AVAKIAN

Pursuant to 28 U.S.C. § 1746, I, Michael E. Avakian, hereby declare as follows:

1. That he has been an attorney for Respondent since the origination of the case and has entered into an legal services agreement with the Respondent Roy Spa, LLC to represent it in this matter.
2. That he is a graduate of the Potomac School of Law (J.D. 1979) and the Georgetown University Law Center (LL.M 1983) (Masters in Labor Law).
3. That he is presently engaged in private practice with an area of specialty in labor relations and employment law with Wimberly, Lawson & Avakian in Washington, D.C.
4. Declarant has represented numerous employers and employees in cases before federal agencies, including the National Labor Relations Board, and in litigation in state and federal courts throughout the country.
5. Declarant is admitted to practice law in the District of Columbia and the State of Georgia and is an active member of both bars. Further, Declarant has argued in every Circuit Court of the United States and was the prevailing counsel of record in one case granted certiorari by the Supreme Court of the United States. Price v. UAW, 487 U.S. 1229 (1988).
6. I have been of counsel to a number of firms including Ruberry, Phares, Abramson & Fox, Abramson & Fox, Richman, Lawrence, Mann, Greene & Smetana, in Chicago and

Smetana & Avakian with offices in Chicago and Washington, D.C. My current billing rate for unfair labor practice proceedings is \$495.00 per hour. In 2012, my billing rate was \$475.00.

7. Attached hereto and made a part hereof is a true and correct copy of relevant portions of Declarant's billing statements, which supports the instant request for attorneys' fees, costs, and expenses. It is a detailed billing report of the law firm of Wimberly, Lawson & Avakian regarding 1) the time spent by and services performed contributing to the representation of Respondent Roy Spa, LLC, in the above captioned matter, and 2) the cost of its expenses in connection with such representation. The activity, time, and amounts were extracted from counsel's Timeslips file. Declarant is required to and it has been his practice, to maintain daily contemporaneous electronic data and/or time sheets of activities on a case by case basis, entered directly into the database system.

8. As the attachment shows, the undersigned has spent one hundred thirty-six and three quarter (136.75) hours on preparing and presenting this case. This expenditure of time is due to the fact that Declarant has served principally in this action and participated in the preparation of all of Respondent's documents, briefs, memoranda, motions, and trial time. The ALJ brief required extensive analysis of the record to address each and every argument presented or inferred by the Acting General Counsel. I have eliminated from the report some information related to attorney client privilege and work product. In addition, I capped the trial time hours at twelve hours each day to accommodate the incidental hours that are incurred in such hearings.

9. Declarant requests reimbursement in this case at the rate of \$475.00 per hour for work conducted. This rate was charged to all clients throughout 2012. It is consistent with the Laffey Index maintained by the United States Department of Justice relating to attorneys with more than twenty years of legal experience seeking reimbursement under statutes permitting the award of attorneys' fees.

10. I have also excluded numerous out of pocket costs and the extensive charges incurred for automated research utilizing WESTLAW to prepare all the papers in the proceedings of this case.

11. Wimberly, Lawson & Avakian assumed the case on behalf of the Respondent through the Center on National Labor Policy, Inc., a non-profit legal foundation, which requested legal assistance for Respondent.

12. Respondent Roy Spa, LLC is claiming attorneys' fees for its counsel at the statutory rate of \$125.00 per hour and requesting an increase to reflect the increase in the cost of living from 1996-2013 to no less than \$186.55 hour. Total hours expended is 136.75.

13. Expenses incurred on behalf of Roy Spa, LLC is \$1,675.06. Attached to this Declaration is the Expense report submitted to the Center on National Labor Policy on its expense form. Airfare to and hotel in Great Falls, Montana was on a fixed price Expedia travel package fare. The other line items of the expense report are self explanatory.

14. The total amount expended by Wimberly, Lawson & Avakian on behalf of Roy Spa, LLC to date in this case for defending the unfair labor practices charges brought by the Acting General Counsel and preparing the papers under the Equal Access to Justice is \$66,631.31.

15. Additionally, the Center on National Labor Policy paid the subpoena witness fee to Local 2's Custodian of Records in the amount of \$47.00 on February 6, 2013 (Check No. 4340). It also paid \$47.00 as the subpoena witness fee to Stacey Cossel on February 7, 2013 (Check No. 4341). It also reimbursed Wimberly, Lawson & Avakian \$1,457.59 in expenses identified in paragraph 13. That amount is included the total claimed in the preceding paragraph.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Michael E. Avakian

Dated: September 12, 2013.

MICHAEL E. AVAKIAN, ESQ.
WIMBERLY, LAWSON & AVAKIAN
1200 G Street, N.W., Suite 800
Washington, DC 20005

Invoice submitted to:

The Center on National Labor Policy, Inc.
On behalf of Roy Spa, LLC
5211 Port Royal Road, Suite 610
North Springfield VA 22151

September 12, 2013

Professional Services

			<u>Hours</u>	<u>Amount</u>
11/1/2012	MEA	Client Meeting; prepare file opening.	1.50	712.50
11/2/2012	MEA	File Review and legal research national defense standard; review complaint.	2.50	1,187.50
11/6/2012	MEA	Legal Research and review NLRB caselaw on jurisdiction.	4.00	1,900.00
11/7/2012	MEA	Legal Research and continue review on NLRB jurisdictional standards.	4.00	1,900.00
11/8/2012	MEA	Legal Research NLRB caselaw in support of Answer and Affirmative Defenses.	2.00	950.00
11/14/2012	MEA	Review Complaint, review file, draft Answer, send to client, research, telcoms with HC and JC, file with NLRB.	3.75	1,781.25
11/16/2012	MEA	Telcon with HC, review file and outline issues for hearing.	0.25	118.75
12/21/2012	MEA	Review file and outline issues for hearing.	0.50	237.50
1/22/2013	MEA	Correspond with ALJ office and NLRB attorney Connelly on case.	0.25	118.75
1/25/2013	MEA	Preparation for ALJ Telcom, conference call with ALJ, NLRB and union counsel, telcom with JC on case matters.	1.00	475.00
1/28/2013	MEA	Legal Research caselaw on jurisdictional standards.	4.00	1,900.00
1/29/2013	MEA	Review company documents, telcons with HC and JC, request further information, legal research, review file materials.	3.00	1,425.00

			<u>Hours</u>	<u>Amount</u>
1/30/2013	MEA	Preparation for hearing, review documents regarding jurisdiction, telcon with HC.	2.00	950.00
1/31/2013	MEA	Review documents for hearing for HC, correspond with HC, review NLRB proposed stipulation, analyze, advise HC and JC, request additional information.	1.50	712.50
2/1/2013	MEA	Review NLRB subpoena, correspond with HC on requirements.	0.25	118.75
2/4/2013	MEA	Telephone conference on subpoena compliance with HC.	0.50	237.50
2/6/2013	MEA	Preparation of subpoena to union and JC, serve.	0.50	237.50
2/7/2013	MEA	Analysis of NLRB stipulation proposal, telcon with HC.	0.50	237.50
	MEA	Preparation of Cossel subpoena.	0.25	118.75
2/8/2013	MEA	Conference call with ALJ and counsel.; correspond with HC on status.	0.50	237.50
2/12/2013	MEA	Review files for subpoena response, multiple correspondences with HC, legal research on national defense standard.	3.00	1,425.00
2/13/2013	MEA	Telcon with HC on subpoena preparation, legal research NLRB caselaw.	0.50	237.50
2/17/2013	MEA	Preparation for ALJ hearing, telcons with HC and JC.	1.00	475.00
2/18/2013	MEA	Preparation for hearing, review documents, pleadings, caselaw, client meeting.	8.00	3,800.00
2/19/2013	MEA	Client meeting, assemble subpoena response documents, meeting with ALJ, telcon with ALJ, submit documents to NLRB General Counsel Connelly, review caselaw, draft motion for GC to specify proof of jurisdiction and motion regarding national defense standard.	12.00	5,700.00
2/20/2013	MEA	Appearance for Hearing, defend client, prepare documents for evidence admission, client meeting.	12.00	5,700.00
2/21/2013	MEA	Appearance for Hearing, defend case.	4.00	1,900.00
2/22/2013	MEA	Travel.	4.00	1,900.00
3/11/2013	MEA	Review transcript of hearing and review applicable NLRB procedural issues on burdens of proof.	2.50	1,187.50
3/12/2013	MEA	Draft motion for enlargement of time to file briefs, contact opposing counsel on any objections.	0.25	118.75
3/13/2013	MEA	Edit draft and file motion for extension of time.	0.25	118.75
4/2/2013	MEA	Review hearing transcript.	4.00	1,900.00

			<u>Hours</u>	<u>Amount</u>
4/3/2013	MEA	Draft brief to ALJ.	3.50	1,662.50
4/4/2013	MEA	Review and further draft of brief to ALJ.	5.00	2,375.00
4/5/2013	MEA	Draft argument and brief to ALJ	8.50	4,037.50
4/6/2013	MEA	Draft and edit brief and argument to ALJ.	4.00	1,900.00
4/7/2013	MEA	Draft and edit brief to ALJ, legal research and review.	7.00	3,325.00
4/8/2013	MEA	Draft, edit, and finalize brief to ALJ, file and serve.	8.00	3,800.00
7/1/2013	MEA	Review ALJ decision with JC.	0.25	118.75
7/18/2013	MEA	Research EAJA fees award, draft motion and memorandum outline for fees and costs.	3.00	1,425.00
7/19/2013	MEA	Legal Research NLRB EAJA cases and revise motion and memorandum.	1.50	712.50
8/8/2013	MEA	Review NLRB docket for entry of final order, edit Motion and Memorandum for EAJA fees.	0.75	356.25
8/9/2013	MEA	Legal Research EAJA cases, edit motion and memorandum of law,prepare affidavit and declaration.	4.00	1,900.00
9/12/2013	MEA	Preparation of documents for EAJA petition, legal research caselaw.	4.00	1,900.00
	MEA	Draft and final edit of Application and Memorandum in support of EAJA petition, research, file same.	3.00	1,425.00
		For professional services rendered	<u>136.75</u>	<u>\$64,956.25</u>
		Additional Charges :		
2/6/2013	MEA	FedEx subpoena to union.		51.18
	MEA	FedEx subpoena to Cossel		51.18
2/7/2013	MEA	Custodian of Records Teamsters Local 2 subpoena fee.		47.00
	MEA	Cossel Subpoena Fee.		47.00
	MEA	FedEx service Local 2		21.11
2/22/2013	MEA	Travel, Meals, Copying Costs for exhibits on location.		1,457.59
		Total additional charges		<u>\$1,675.06</u>

	<u>Amount</u>
Total amount of this bill	\$66,631.31
Balance due	<u>\$66,631.31</u>

<u>Current</u>	<u>30 Days</u>	<u>60 Days</u>	<u>90 Days</u>	<u>120 Days</u>
65,167.15	0.00	0.00	0.00	1,464.16

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Michael E. Avakian	136.75	475.00	\$64,956.25

